

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0556

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DONNIE MACK SELLERS,

Defendant and Appellant.

FILED

NOV - 5 2009

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA**MOTION FOR EXTENSION OF TIME  
AND AFFIDAVIT IN SUPPORT**

Koan Mercer, counsel for Appellant, respectfully requests an extension until February 25, 2010, in which to file the opening brief in this matter. Due to the nature and volume of counsel's caseload, counsel is requesting 90 days. An affidavit in support is, therefore, attached although this is a first extension request.

Counsel for the State has no objection to this 90-day extension request.

Respectfully submitted this 5th day of November, 2009.

OFFICE OF THE STATE PUBLIC DEFENDER  
Appellate Defender Office  
139 N. Last Chance Gulch  
P.O. Box 200145  
Helena, MT 59620-0145

By: 

KOAN MERCER  
Assistant Appellate Defender

STATE OF MONTANA            )  
  : ss.

County of Lewis and Clark    )

I, Joslyn Hunt, being first duly sworn upon my oath, depose and state as follows:

1.     I am a licensed, practicing attorney in the State of Montana, and am currently employed by the Office of State Public Defender, Appellate Defender Office as Chief Appellate Defender.

2.     In that capacity, I supervise Koan Mercer who has been assigned to handle the above-entitled criminal appeal.

3.     The Appellant's opening brief was first due on November 27, 2009.

4.     It is presently still due on November 27, 2009.

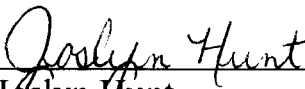
5.     Mr. Mercer will be unable to complete this brief in the previously allotted time because he has been working to complete the opening briefs for *State v. Henson*, DA 09-089, an appeal from a seven-day mitigated deliberate homicide trial, and *State v. Lamere*, DA 09-0355, both of which will be filed on or before their present due date of November 27, 2009.

6.     Mr. Mercer will continue to work diligently under my supervision to brief this appeal in a timely manner; however, it appears Mr. Mercer will need at least an additional 90 days. I am in the process of reassigning two of his cases to other attorneys, but Mr. Mercer will still have eight other cases awaiting opening

briefing before this matter and has recently had *State v. Andrews*, DA 09-0209, set for oral argument.

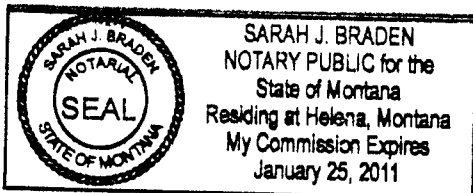
7. Opposing counsel has been contacted concerning this motion and does not object.

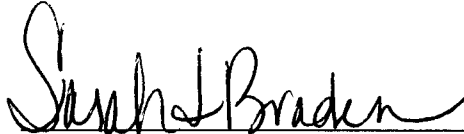
8. Further your affiant sayeth naught.

  
\_\_\_\_\_  
Joslyn Hunt

SUBSCRIBED AND SWORN to before me this 24<sup>th</sup> day of November,

2009.



  
\_\_\_\_\_  
Sarah J. Braden

**CERTIFICATE OF SERVICE**

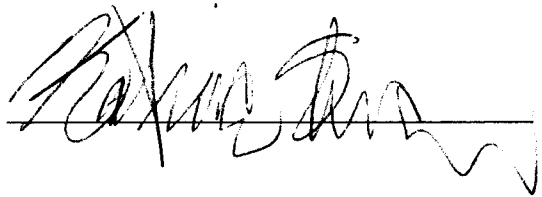
I hereby certify that I caused a true and accurate copy of the foregoing  
Motion for Extension of Time and Affidavit in Support to be mailed to:

STEVE BULLOCK  
Montana Attorney General  
MARK MATTIOLI  
Assistant Attorney General  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401

GEORGE H. CORN  
Ravalli County Attorney  
Courthouse  
205 Bedford Street  
Hamilton, MT 59840

DONNIE MACK SELLERS 2155657  
Montana State Prison  
700 Conley Lake Road  
Deer Lodge, MT 59722

DATED: November 5, 2009

A handwritten signature in black ink, appearing to be "B. J. [unclear]", written over a horizontal line.